IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

Criminal Application No. 1385 of 2007

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's Orders

Mrs K.V. Sirpurkar, Advocate for applicants.

Mr A.S. Sonare, APP for State.

Coram : C.L. Pangarkar, J

Dated : 27th June 2007

1/ This is an application under Section 439 Cr.P.C. for grant of bail. Heard Mrs Sirpurkar, learned counsel for applicants and Mr Sonare, learned APP for State.

2/ On 1.2.2007 elections for Akola Municipal Corporation were being held. It is alleged that applicant no. 1 was one of the candidates contesting the election.

One Namdeo Aglawe, Police Inspector was on duty in Polling Booth No. 136 in old city, Akola. It is alleged that applicant no. 1 came there and quarreled with Presiding Officer making complaint to him that he is unnecessarily insisting upon the voters to bring photo-identity card. He was also saying as to wherefrom those poor people will bring photo-identity cards. He was abusing the election party there. Complainant Namdeo Aglawe, Police Inspector tried to pursuade the present applicant no. 1 not to indulge in abusing the election officer. Later, it is alleged that applicant no.1 along with his son Azad Khan (applicant no. 2) entered into the polling booth and confined the election party in the booth. Due to timely intervention on the part of police, it is alleged that they were able to remove those people. While

they were being removed, it is alleged that the present applicant no. 1 was instigating the people saying that they should kill the election officers and the police. He was also instigating people to bring any kind of weapon to kill election party and police party as a result of which, the people who had gathered there, had started pelting stones at the police party and election party. They caused damage to the property in the Polling Booth. One unknown person pelted a big brick towards the complainant as a result of which complainant received injury to the back side of his head. Complainant P.I. Namdeo Aglawe then lodged a report on the basis of which offences have been registered against the present applicants and others under the various sections of the Indian Penal Code including offences for causing

obstruction in the election process and an offence under Section 307 of the Indian Penal Code.

3/ The applicants had moved an application for grant of bail before the Sessions Court which rejected the same vide order dated 4.5.2007.

4/ Learned counsel for the applicants submitted that the only allegation against the applicants is that they had instigated the people to assault the election party and the police party. She submitted that even this allegation is not correct because of the fact that even applicant no.1 had sustained serious injury and was admitted in the hospital for a period of five days. On the other hand, she submitted that the police officer who had sustained the injury was discharged on the same day. It was further submitted that the fact that the applicant no. 1 sustained injury

by brick shows that he himself was not in the mob, but on the side of police/polling booth. It is submitted that had he been one of those who pelted stones etc. towards election/police party, he would not have suffered injury. It appears that stones were being pelted and the applicant no. 1 sustained injury. An injury that is sustained by police officer is not of serious nature although it is described as grievous by the Medical Officer. Complainant was discharged from the hospital on the same day. Charge-sheet has already been been filed in the Court. None of the offences is punishable with death. Although it is alleged that several offences have been registered against the applicant no.1, it is submitted that in most of the cases he has been acquitted by the Court of Law and those offences were registered only

because of the fact that he has been contesting elections for the last fifteen years and has been elected as a corporator.

5/ Since none of the offences is punishable with death and the applicants have been in jail for a period of more than five months and charge-sheet has been filed in the Court, I see no difficulty in allowing the application. It would, however, be necessary to ensure that the applicants do not tamper with the prosecution evidence and for that purpose, certain conditions will have to be imposed on the applicants.

6/ In the facts and circumstances narrated above, both the applicants be released on bail on their executing PR Bond of Rs. 5000/- each with one surety in the like amount. They shall not enter the municipal limits of Akola city

until further orders from this Court. Application stands disposed of accordingly. Hamdast granted.

Judge.

hsj